WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.08.2022

Pronounced on : 07 .09.2022

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A.No. 944 of 2001
And
C.M.P.No. 9842 of 2001

R.Kandaswamy ... 2nd defendant/2nd Respondent/Appellant

Vs.

1. P.Pacha Goundar ... Plaintiff/Appellant/1st Respondent
2. Meena (deceased)
3. Thilak Kumar (died)
4. Thilagavathy
5. Pavithra
6. Tmt. Sasi
7. Prasad
8. Sagundala ... Respondents 3 to 6/Respondents 2 to 5

https://www.mhc.tn.gov.in/judis

WEB COPY

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Decree and Judgment dated 13.06.2001 on the file of the District Court, Nilgiris at Uthagamandalam, reversing the decree and Judgment dated 30.04.1999 on the file of the District Munsif, Coonoor.

***

For Appellant : Mr. R.Subramanian

For 1st Respondent : Mr. S.K.Raghunathan

JUDGMENT

The second defendant in O.S.No. 154 of 1993 on the file of the District Munsif Court, Coonoor, is the appellant herein.

2. O.S.No. 154 of 1993 had been filed by the first respondent P.Pacha Goundar against J.Gurusamy and the present appellant R.Kandaswamy, seeking permanent injunction restraining the said defendants from interfering with peaceful possession of the suit schedule property.

3. The suit schedule property had been described as lands measuring 0.39 acres and 0.48 acres, totally 0.87 acres together with Tea

https://www.mhc.tn.gov.in/judis

WEB COPY

plants and two labourer quarters situated in S.Nos. 311 and 368 at Adigaratty Village, Coonoor in Nilgiris District.

4. By Judgment dated 30.04.1999, the District Munsif, Coonoor, dismissed the suit.

5. The plaintiff then filed A.S.No. 10 of 1999 before the District Court, Nilgiris. Pending the Appeal, the first defendant J.Guruswamy died and his legal representatives had been brought on record as third to sixth respondents.

6. By Judgment dated 13.06.2001, the District Judge, Nilgiris, allowed the Appeal Suit.

7. This necessitated the second defendant to file the present Second Appeal.

8. The Second Appeal had been admitted on the following four substantial questions of law on 28.06.2001:-

https://www.mhc.tn.gov.in/judis

WEB COPY

*"**1**. Whether in law has not the lower appellate Court failed to see that the plaintiff has to prove that he was in possession of the property on the date of filing of the suit and no document has been filed to show his possession?;*

***2.** Whether in law has not the lower appellate Court overlooked Ex.A.3 wherein it is clearly stated that D1 was in possession on 10.03.1993?; and*

***3**. Whether in law has not the lower appellate Court omitted to see that the suit is bad for non-joinder for not impleading the co-owner Chennai?;*

***4.** Whether in law has not the lower appellate Court overlooked the suit for bare injunction is not maintainable without setting aside the sale deed in favour of the second defendant? "*

9. The suit in O.S.No. 154 of 1993 had been filed by the plaintiff

https://www.mhc.tn.gov.in/judis

WEB COPY

Pacha Goundar claiming that the first defendant J.Guruswamy had originally leased out the suit schedule lands by lease agreement dated 01.05.1992 on payment of Rs.25,000/-, for a period of 5 years. The plaintiff claimed that he had paid the said amount. Thereafter, the first defendant expressed a desire to sell the lands. An agreement of sale dated 10.03.1993 was executed between the first defendant and the plaintiff. The total consideration was determined at Rs.1,31,500/-. An advance of Rs.45,000/- was paid. It was stated that however the defendants attempt to interfere with peaceful possession. It was also stated that the second defendant claimed that he had purchased the property. It was under these circumstances that the suit for permanent injunction was filed.

10. The first defendant claimed that there were several co-owners in the suit property. It was also stated that under the lease deed dated 01.05.1992, the plaintiff was not put in possession. It was also stated that the labour quarters were not part of the agreement and therefore, a dispute arose between the parties. A panchayat was held and the advance amount paid under the lease was paid back to the plaintiff. It was stated that the lease then stood cancelled.

11. Thereafter, the first defendant entered into an agreement of

https://www.mhc.tn.gov.in/judis

WEB COPY

sale on 03.03.1993 with the second defendant. He further stated that the second defendant was put in possession. He further stated that on 10.03.1993, he entered into another agreement of sale with the plaintiff but this was to compel the second defendant to go forward with purchasing the property. It was stated that before the panchayat, the amount of Rs.45,000/- was returned to the plaintiff. Thereafter on 01.04.1993, the property was also sold to the second defendant. It was stated that the second defendant was in possession. It was therefore stated that the suit should be dismissed.

12. The second defendant claimed that he had no knowledge of the lease deed dated 01.05.1992 or the agreement of sale dated 10.03.1993. He claimed to be a *bona fide* purchaser of the suit property and the two labour quarters. He was put in possession. He claimed that one E.L.Chennaiya was a common co-owner of the property. He stated that the suit for injunction was not maintainable and he claimed that the suit should be dismissed.

13. The parties went to trial and during trial, the plaintiff

https://www.mhc.tn.gov.in/judis

WEB COPY

examined himself as PW-1 and examined another witness as PW-2. The first defendant examined himself as DW-1 and the second defendant was examined as DW-2.

14. The plaintiff marked Exs. A-1 to A-5. Ex.A-1 was the lease agreement dated 01.05.1992, Ex.A-2 was the endorsement in the said agreement, Ex.A-3 was the agreement of sale dated 10.03.1993. The defendants marked Exs. B-1 to B-13. Ex.B-1 was the copy of the order of the Thasildar, Coonoor dated 03.06.1993, Exs. B-2, B4 were chitta extracts and Ex.B-5 was adangal extract, Exs. B-6 to B-10 were kist receipts and Exs.B-11 and B-12 were house tax receipts.

15. On the basis of the pleadings, oral and documentary evidence adduced, the District Munsif, Coonoor found as a fact that the plaintiff was not put in possession under Ex.A-1. There were no documents produced by him to prove that he was in possession. This evidence was weighed with the documents produced by the second defendant, who had infact purchased the property, namely, Ex.B-1 the order of the Thasildar in which the properties had been mentioned and the chita, adangal and

https://www.mhc.tn.gov.in/judis

WEB COPY

kist extracts and also the house tax receipts. Ex.B-13 was the copy of the order of a learned Single Judge dated 03.08.1988 in C.R.P.No. 2075 of 1994 filed by the plaintiff against the order refusing to grant injunction. The Civil Revision Petition was dismissed and it was observed that the plaintiff had not filed any documentary evidence to show that he was in possession of the suit property. In view of the fact that the plaintiff had not established possession, the suit was dismissed.

16. The plaintiff then filed A.S.No. 10 of 1999 before the District Court at Nilgiris. The learned District Judge, Coonoor, however relied on Ex.A-1 the lease deed and noted that it had been prepared on Rs.5/- stamp paper and that there was an endorsement about payment of consideration. It was stated that the first defendant had not proved that the consideration had been returned to the plaintiff. The learned District Judge therefore held that on the date of the suit, the plaintiff was in possession. He rejected the documents filed by the second defendant claiming that they were documents subsequent to the filing of the suit. The Appeal Suit was therefore allowed.

17. Questioning that Judgment, the second defendant filed the

https://www.mhc.tn.gov.in/judis

WEB COPY

present Second Appeal. Since the discussion with respect to all the substantial questions of law overlap they are answered together.

18. The parties will be referred as plaintiff and defendants.

19. The plaintiff is the first respondent herein and the second defendant is the appellant herein. The legal representatives of the first defendant are the second to eighth respondents.

20. The plaintiff had filed the suit seeking injunction to protect possession of the suit schedule properties. The suit schedule properties were said to be vacant land measuring 0.87 acres and with two labourer quarters. The plaintiff claimed that he had earlier been put in possession under Ex.A-1, lease deed dated 01.05.1992. It must be pointed out that the said lease deed was a period of 5 years and had been prepared on a stamp paper of the value of Rs.5/-. In had been inadequately stamped and had not been registered. It is not admissible in law. It cannot be referred for any purpose. Even if it is to be examined for collateral purpose of possession, a reading shows that on the basis of the lease

https://www.mhc.tn.gov.in/judis

WEB COPY

deed, the possession was stated to be with the first defendant. Even in Ex.A-3 agreement of sale dated 10.03.1993, the possession was stated to be with the first defendant.

21. The second defendant had purchased the properties by a registered sale deed dated 01.04.1993. The second defendant is in possession and it is clearly established by the documents produced, namely, extracts of the chitta and adangal and the kist receipts.

22. The trial Court had refused to grant interim injunction pending the suit and that order had also been affirmed by this Court under Ex.B-13 in C.R.P.No. 2075 of 1994 dated 03.08.1998. As a matter of fact, the reasoning of the First Appellate Court Judge that the documents produced by the second defendant are subsequent to the suit cannot be taken into consideration since it is for the plaintiff to prove that he was in possession on the date of filing of the suit.

23. The second defendant had filed documents to show that he is

https://www.mhc.tn.gov.in/judis

WEB COPY

in possession from the date of his sale deed. The first substantial question of law is answered that the Lower Appellate Court had failed to hold that the burden was on the plaintiff to prove possession and the documents produced do not reflect that such burden had been discharged.

24. The second substantial question of law again is actually an issue of fact and it is seen that the recitals under Ex.A-3, dated 10.03.1993, reflect the first defendant to be in possession. If this be so, the claim of the plaintiff that he was put in possession under Ex.A-1 lease deed stands falsified. The substantial question of law is answered that again the First Appellate Court erred in ignoring this statement in Ex.A-3.

25. The third substantial question of law is with respect to non joinder of the co-owner Chennaiya. This issue pales into insignificance since, on the issue of possession it has been held that the plaintiff had failed to prove possession or produce any document to show that he was in possession on the date of filing of the suit.

https://www.mhc.tn.gov.in/judis

WEB COPY

26. The fourth substantial question of law is with respect to the sale deed in favour of the second defendant. The suit is for possession and when a cloud is created over the title, then, the plaintiff should have instituted the suit seeking to set aside the sale deed in favour of the second defendant.

27. At any rate, the suit being only for permanent injunction, the plaintiff should first and primarily produce documents to show that he was in possession. He had failed to do so. The First Appellate Court had erred in appreciating the evidence adduced.

28. I hold that the plaintiff had not claimed possession on the basis of title but on the basis of lease, Ex.A-1 which document is inadmissible in law.

29. Even if it is to be examined for the basis of possession, it would reflect that the first defendant was in possession and that the possession had not been handed over to the plaintiff. Therefore, though the suit could be maintained since the limited relief of injunction alone is

https://www.mhc.tn.gov.in/judis

WEB COPY

sought, as the plaintiff had not produced any documents to show possession, the suit will have to necessarily fail.

30. In view of the above reasons, the Second appeal is allowed with costs. The Judgment and Decree of the District Court, Nilgiris, Uthagamandalam, dated 13.06.2001 in A.S.No. 10 of 1999 is set aside. The Judgment and Decree of the District Munsif Court, Coonoor, dated 30.04.1999 in O.S.No. 154 of 1993 is restored and confirmed. Consequently, connected Civil Miscellaneous Petition is closed.

07.09.2022
(½)

Index :Yes/No
Internet:Yes/No
vsg

To

1. District Court, Nilgiris, Uthagamandalam.

2. District Munsif Court, Coonoor.

https://www.mhc.tn.gov.in/judis

WEB COPY

C.V.KARTHIKEYAN, J.

vsg

Pre-Delivery Judgment made in
S.A.No. 944 of 2001
And
C.M.P.No. 9842 of 2001

07.09.2022
(½)

https://www.mhc.tn.gov.in/judis